

**TOWN OF SCITUATE
ZONING BOARD OF APPEALS
Meeting Minutes**

February 25, 2021

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TOWN CLERK

Present (via zoom): Anthony Bucchere, Chairman, Ed Tibbetts, Tom Cavanagh, George Xixis, and Susan Harrison

Also present (via zoom): Robert Vogel, Scituate Building Commissioner

The Scituate Zoning Board of Appeals held a public hearing on Thursday, February 25, 2021 via zoom (remote access/participation). The meeting was called to order at 7:00 P.M. to consider the following requests:

First Application: (Continued from January 21, 2020) Bryan and Melanie Legge c/o Walter B. Sullivan, PC at 80 Washington Street, Building B, Suite 7, Norwell, MA 02061 request a Variance to allow for the construction of a 30'x15' swimming pool and a 10' x 12' pool house on the south side of the lot closest to Parker Avenue on a non-conforming lot at **9 Moorland Road, Scituate, MA (Assessor's Map 64, Block 3, Parcel 5). Representing the Applicant – Walter B. Sullivan, Sullivan & Comerford, PC, 80 Washington Street, Building B, Suite 7, Norwell, MA 02061.**

Atty. Sullivan – Stated he had previously submitted a request for an extension in this matter. Attorney Sullivan states that he has been awaiting information that supports the pool requested from Maddie's prior therapist, with whom she had never worked with due to the pandemic, and Maddie has now changed schools. Supplemental information is pending from Maddie's current therapist at her new school with whom she is working with as Maddie has received a vaccination. A 30 day continuance is requested.

Mr. Tibbetts - makes a motion to grant the continuance to the March 18, 2021 meeting. Motion seconded by Mr. Xixis. Mr. Bucchere, Mr. Xixis and Ms. Harrison in favor. Mr. Cavanagh abstained from voting.

Mr. Tibbetts – Made a motion to move the fifth application up and hear the fourth application last due to the public interest in this matter. Motion seconded by Mr. Bucchere, all in favor, unanimous.

Second Application: Brian and Nancy Jones of 6 Michael Avenue, Scituate, MA 02066 request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, and/or Section 810.2 of the Scituate Zoning Bylaw to allow for demolition of two pre-existing, non-conforming accessory structures and the reconstruction of an attached garage addition to the pre-existing, non-conforming single-family dwelling at **6 Michael Avenue, Scituate, MA 02066 (Assessor's Map 64, Block 5, Parcel 13).**

Brian and Nancy Jones - (applicant) - Brian Jones confirmed that the application when submitted did read variance; however, should have read Special Permit/Finding. Mr. Jones stated that after consulting with this office upon receipt of the application, that the application was processed in that manner. Mr. Jones reviewed the application and current status. Mr. Jones points out the fact that back in 2007 this

same matter was before this board and approved but due to circumstances the work was not completed and the time limit has lapsed.

Mr. Bucchere – asked the applicant to confirm information within the application. Mr. Tibbetts asks applicant to confirm that there are no significant differences in this application compared to the application filed in 2006, to which the reply was no. Additionally noted is that this application will increase the square footage by 16% and does not hit the 20% threshold. Mr. Cavanagh states that the previous and current applications appear to be the same.

Mr. Bucchere – states that the removal of the garage would be an added benefit as it would be getting rid of an extreme nonconformity and doing an addition on a nonconforming structure and not an offensive intensification, if an intensification.

Mr. Vogel – Pointed out the fact that now nor in the future should this addition should be considered an accessory dwelling as it does not meet the criteria. No comments from Ms. Harrison or Mr. Xixis.

Meeting was opened for public comment

John McAteer (abutter @ 22 Collier Road, Scituate, MA 02066) – States the proposal would be an enhancement to the Jones's property.

Mr. Tibbetts - Makes a motion that the board grant the applicant's Special Permit under Scituate zoning bylaw Section 810.2 and finding under M.G.L. Chapter 40A, Section 6 that the proposed raze and reconstruct of the two existing nonconforming detached garages located at 6 Michael Avenue, Scituate, MA and replace them with the extension of the pre-existing nonconforming dwelling structure as presented in the applicant's is not substantially more detrimental or injurious to the person's property or improvements in the vicinity and to the degree that it may be it is inconsequential as shown on a plan dated December 28, 2020 by the titled Office Garage Addition to the Jones residence, 6 Michael Avenue, Scituate, MA by Rivermoor Engineering, LLC. Motion seconded by Mr. Cavanagh, all in favor, unanimous.

Third Application: Joseph and Maura Burke of 17 Bertis Adams Way, Westborough, MA 01581 request a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, and/or Section 810.2 of the Scituate Zoning Bylaw to allow an alteration to a pre-existing, nonconforming single-family dwelling at **89 Marion Road, Scituate, MA 02066 (Assessor's Map 40, Block 12, Parcel 5)** increasing the gross floor area by more than 20%. **Representing the Applicant – Paulette O'Connell of OCO Architecture Design, P.O. Box 709, Hingham, MA 02043.**

Ms. O'Connell - Reviewed the application and current status. Ms. O'Connell noted that the footprint of the project would not change but a third level would be added and the application is before the board as the project would exceed the 20% threshold.

Mr. Bucchere – Had no further comments. Mr. Tibbetts confirmed with Ms. O'Connell that she was representing the applicant as the architect. Also, that the foundation has been evaluated and going forward won't be in a compromised situation. Ms. O'Connell said pending the board's approval further evaluation will be done. Mr. Xixis confirms that height requirements are met. No further comments from the board and/or Mr. Vogel.

Meeting was opened for public comment – no public comment.

Mr. Cavanagh – On the application of Joseph and Maura Burke of 17 Bertis Adams Way, Westborough, MA for their request for a Special Permit/Finding pursuant to M.G.L. Chapter 40A, Section 6, and Section 810.2 of the Scituate Zoning Bylaw that the proposed alteration of the pre-existing nonconforming single-family dwelling at 89 Marion Road, Scituate, MA as depicted on the plan prepared by Morse Engineering dated October 28, 2019 that as constructed by the plan does not create any new nonconformities or intensify any existing nonconformities and to the effect that it does it is not substantially detrimental to the neighborhood. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

Fourth Application: Alfred M. Boyajian, 94 Marion Road, Scituate, MA 02066 requests a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, and/or Section 950.3 of the Scituate Zoning Bylaw or any other relief or advice that the Board of Appeals may grant to allow for the construction of a single family dwelling at **43 Oceanside Drive, Scituate, MA 02066 (Assessor's Map 40, Block 2, Parcel 1)** and that the requested relief be granted on the basis that the current locus is a vacant lot created prior to the adoption of zoning in Scituate and that no setbacks are required.

Representing the Applicant –Paul J. Mirabito, PLS (of Ross Engineering Company, Inc.) and Stephen Corsaro, Esq., Tufankjian, McDonald & Doton, LLC, 207 Front Street, Scituate, MA 02066.

Mr. Mirabito - Reviewed the application and current status.

Mr. Bucchere – Asks for confirmation of the timeline that the structure was removed. Mr. Tibbetts additionally asks for confirmation regarding noted measurements on the plan and questions with regard to previous 2009 ZBA decision on this property. Mr. Mirabito confirms that the proposed dwelling on this application is virtually identical to this proposal. Mr. Tibbetts and Attorney Corsaro also addressed the issue of the no setbacks issue. Both parties feel that the issue before the board is to reconsider the lapsed finding from 2009. No further questions from the board.

Mr. Vogel – Informed the board that an abutter, Mark Hamacher, made an in-person visit to the Building Department at Town Hall on February 25, 2021. Mr. Hamacher had questions with regard to setbacks and property lines and general comments surrounding “bed and breakfast and/or Airbnb functions”, which were discussed with Mr. Vogel.

Meeting was opened for public comment

Stephanie Burke (abutter @ 93 Marion Road, Scituate, MA) – Asked for clarification of the setbacks and the footprint of the proposed dwelling. This information was provided to her by Mr. Bucchere and reiterated by Mr. Tibbetts and Mr. Vogel. Ms. Burke also had questions regarding the grading of the lot and Mr. Mirabito confirmed that the grading of the lot would be the same as it is now.

Amy Grozier (abutter @ 72 Kenneth Road, Scituate, MA) – Had questions surrounding the Airbnb and/or functions use of the proposed single-family dwelling.

Mr. Vogel – Clarified that there are no current enforceable regulations in the Scituate Zoning Bylaws and/or MA state law that relates to the issue of the Airbnb issue. Mr. Bucchere agrees with Mr. Vogel and further points out that even a short term renter in a single-family home would be in compliance of the code in Scituate.

Roland Stokes (abutter @ 87 Marion Road, Scituate, MA) – Questions the proposed height of the proposed dwelling. Mr. Vogel provides a response to this question. Mr. Stokes also comments that with

Airbnb and VRBO rentals in the neighborhood also come parking and nuisance/noise issues. Mr. Bucchere addresses these comments.

Jennifer Kuhn (abutter @ 20 Carrie Litchfield Lane, Scituate, MA) – Asks board to hold off on approving this project so that neighbors and herself can have the opportunity to review the proposed plans for this project. Mr. Bucchere responds that he understands her concerns; however, the board cannot control what the house will look like. The board can regulate other aspects of the application such as the footprint, height, location, setbacks and use, but does not have the power to regulate appearance. Ms. Kuhn would like the ability to review the proposed plans online without visiting Town Hall. Mr. Bucchere explains that that is not a possibility. Ms. Kuhn expresses concern regarding the fact that the plans cannot be reviewed online and further requests holding off on approval. Mr. Bucchere states he is not inclined to delay a decision and notes Ms. Kuhn's decision. Mr. Tibbetts further comments with regard to the regulation of the Zoning Bylaws. Ms. Kuhn further asks if the proposed plans are stamped by a registered architect or a surveyor and Mr. Tibbett's confirms that they in fact are.

Mark Hamacher (abutter @ 95 Marion Road, Scituate, MA) – expressed concerns over the 2009 plans for this property. Mr. Hamacher appealed the 2009 plans. Mr. Hamacher also was concerned about the setbacks and footprint of the proposed home and usage of the property (rentals etc.). Mr. Bucchere and Mr. Tibbetts commented on Mr. Hamacher's concerns.

Mr. Cavanagh – A motion on the application of **Alfred M. Boyajian, 94 Marion Road, Scituate, MA 02066** for his request for a Special Permit/Finding in accordance with M.G.L. Chapter 40A, Section 6, Section 950.3 of the Scituate Zoning Bylaw to allow for the construction of a single family dwelling at 43 Oceanside Drive, Scituate, MA 02066 and that the proposed construction pursuant to the plans prepared by Paul Mirabito of Ross Engineering which are dated January 15, 2021 that if constructed pursuant to the plans will not create and new nonconformities or intensify any existing nonconformities and to the extent that they do it is not detrimental to the neighborhood. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

Fifth Application: Scituate Harbor Development, LLC - Stephen C. Warner and Robert H. Warner, Managers of 146 Front Street, Scituate, MA 02066 requests (1) Special Permit/Finding pursuant to Scituate Zoning Bylaw Section 820, and/or any other relief which the Board of Appeals may grant, to change the pre-existing, nonconforming theatre use, and adjacent retail and other space, of the interior of the building at **1 Mill Wharf Plaza (Assessor Map 50, Block 7, Parcel 101-S)**, to four condominium units containing a total of seven bedrooms, and to combine approximately 900 sf of such theatre use into retail space, which is a specified use not substantially different in character, or not substantially more detrimental or injurious to the neighborhood than the existing nonconforming use, and (2) a finding, and/or any other relief which the Board of Appeals may grant, that the parking demand created by such change in use is substantially reduced and is exempt from, or does not constitute an intensification of, parking requirements under Scituate Zoning bylaw Section 760. **Representing the applicant – Jeffrey A. De Lisi, Esq., Ohrenberger, De Lisi & Harris, LLP, 28 New Driftway, Scituate, MA 02066 and Jean Hermann, Architect with Carr, Lynch & Sandell, Inc., 1904 Massachusetts Avenue, Cambridge, MA.**

Atty. De Lisi - Reviewed the application and current status, including issues with regard to parking issues. No significant changes are proposed to the exterior of the building. Atty. De Lisi also addressed the receipt of the correspondence from the Planning Board and their concerns. Robert (Bob) Warner further explained his efforts concerning the theater and the pending application and status.

Mr. Xixis – Questions why retail space vs. condominiums and addresses parking concerns. Mr. Xixis also questions the mixed use and/or commercial use requirements addressed by the Planning Board. Atty. De Lisi responds to these issues.

Mr. Cavanagh – Discusses how many parking spaces are designated to 1 Mill Wharf, 3 Mill Wharf and 132 Front Street as a residential standpoint. Atty. De Lisi states that 30 parking spots are designated to 28 condominium units. The remainder of the parking is using the easement and Cole Parkway. The current easement plan layout is approximately 68 spots. On the plan that was previously submitted in 2007 there were approximately 60 spaces. There is more parking available now than on the plan layout from 2007. The parking spaces that are on the easement plan are the only spaces that are legally available for residents at this time, Cole Parkway is public parking. The Welch Company has now been bought by another entity and where the easement has changed, besides the 30 parking spaces that would most likely be deeded, between the two clauses there are approximately 28 units (54 bedrooms).

Atty. De Lisi – The easement document that was provided by the board, points out not parking spaces but an easement area that is available for parking – it did not specify any number of parking spaces. Mr. Bucchere states that 30 spaces would be designated, 21 spaces drawn on easement plan and additional spaces which are not shown on the 2007 easement plan (currently along where the charter boats are located), which is technically private property/private easement.

Ms. Harrison & Mr. Tibbetts – asks for clarification on spots that would be available to residents. Mr. Tibbetts points out that Cole Parkway has a restriction for overnight parking.

Mr. Bucchere – States that in his day job he works in commercial real estate and the residential use of this property is questionable; however, there is no direct access from Front Street, and other uses would not be viable. Atty. De Lisi commented on the proposed residential/retail use, which would allow the owners to stay in business.

Mr. Bucchere also addresses the correspondence and concerns expressed by the Planning Board with regard to residential units being on the second floor and retail being on the first floor as residential units on the first floor were “against the towns master plan or thinking for the harbor”. Mr. Bucchere has been in contact via telephone with the Planning Board and the Building Commissioner, Bob Vogel, regarding these concerns and reviewed the building code and could not find any regulations in this regard. Atty. De Lisi responded to these issues that although he and his client(s) respect the opinions of the Planning Board the proposed application is what they have come up with in order to survive. The proposed change in use and parking concerns of the Planning Board were also discussed. Mr. Bucchere states that a request was made by the Planning Board Chair to deny or further review this application and send the applicant for a site plan review. Mr. Bucchere and Mr. Vogel agree that that was the interpretation of the Planning Board correspondence. Atty. DeLisi disagrees that a site plan review is not appropriate as the specific use has not been established. Mr. Bucchere refers to Town of Scituate Zoning Bylaw Section 770.2 (Site Plan Administrative Review) and states it is of his opinion that per the bylaw, a site plan review would not be required for this particular application. Mr. Bucchere again addresses the parking issue and feels that the approval of this application hinges on the parking issue due to the parking demand.

Mr. Vogel – Responded to the parking issues addressed.

Mr. Xixis – Commented on the Bylaw Section 770.2 (A) and its applicability. Mr. Xixis comments that he believes that Section 770.2 (A) is applicable with the language “....no business or commercial use shall be expanded in ground area, changed from one type of business or commercial use to a different type of business or commercial use....”. Atty. De Lisi comments that he feels that is not the case as any change in business to business would require a site plan review and that is not the case. Additionally, Mr.

Bucchere states that he disputes that as well as the proposed application would not be going from one commercial use to another as retail and residential already exist in the building.

Mr. Bucchere – Comments on the letter received by the Scituate Harbor Condominium Trust Board of Trustees and shares that the abutters were able to reach out to the abutter and raised some valid concerns and expressed them in a well written letter.

Meeting was opened for public comment

Lawrence Nicolai (representing Scituate Harbor Condominium Trust Board of Trustees/abutter @ 3 Mill Wharf Plaza, Scituate, MA) - states that the Trustees are not challenging Scituate harbor development intention to repurpose the theatre space nor objecting to the proposed change. Stated they would defer to the decisions of the ZBA and Planning Board. The Trustees have a fiduciary responsibility to act prudently in the best interests of the owners. Concerns in the proposed applications consist of noise, dust, dirt and disruption of life during construction to residents. States that they have met with Atty. De Lisi and the Warner's and agree that the answers to these questions ultimately lie with the contractor. It is the intent of the Board of Trustees that the questions/concerns be noted on record so that a satisfactory agreement can be reached with minimal impact on the residents. Parking and signage concerns are also expressed. Mr. Nicolai states that he believes that a point of understanding and collaboration has been reached in discussions with Atty. De Lisi and the Warner's in the scope of this project.

Brian Sullivan – (former Chairman of the Scituate ZBA Board) – stated that in his opinion this matter does not need to be before the ZBA – that the applicant can do what they want to do as a matter of right. They are eliminating a pre-existing nonconforming use, they are going for a conforming use and decreasing the parking impact.

Margaret Loughlin (abutter @ 1 Mill Wharf Plaza, Unit S26, Scituate, MA 02066) – had concerns regarding the parking issues, specifically parking for overnight guests and flooding issues (four major floods and water damage and rot).

Deborah (Debbie) Farrell and Paul Gansheimer (?) (abutter @ 124 Front Street, Scituate, MA 02066) – questions the board on whether the proposed new residents will or will not have designated parking. Atty. De Lisi commented that at this time he is not certain whether the right is available to designate spaces to specific units. At this time there is no plan to designate those spaces. Ms. Farrell raises the issue of the possibility of harbor resident stickers as there is a lot of use due to marina traffic, Mill Wharf Restaurant patrons, Heritage Days etc. Atty. De Lisi responded to Ms. Farrell's concerns.

Mr. Bucchere – In response to Ms. Farrell's concerns, Mr. Bucchere explained that he feels Ms. Farrell has valid points but the parking issue is not something that this board has the power to grant and/or push for and not something that is part of this application.

Atty. De Lisi – commented on the suggestion of harbor resident stickers raised by Ms. Farrell and encouraged the board, on approval of this application, to contain language in their decision that the town consider something along the lines of parking stickers. Mr. Bucchere further addressed this issue.

Mr. Gansheimer (?) – discussed with the board the issue of the granted parking rights and differences between designated parking for apartments vs. condominiums. Mr. Bucchere stated that regarding the application at issue, parking will be considered private condominiums purchased by private people without deeded parking. Atty. De Lisi pointed out that to date, it has not yet been determined whether the units will be apartments or condominiums.

Mr. Tibbetts – additionally commented on the parking issue. Atty. De Lisi commented that presently on the application the units are listed as condominiums. Mr. Tibbetts commented that he liked the parking sticker idea and suggested that it is an issue that should be pursued by the town.

Mr. Bucchere – asked to have an agenda item put on the next scheduled meeting agenda to discuss the issue of harbor resident sticker parking. Mr. Bucchere also addressed Atty. De Lisi as to if he was seeking a Finding and/or more than one Finding in this matter. Atty. De Lisi confirmed that he was seeking three (3) Findings: 1) under Section 820 that the proposed change is not substantially more detrimental to the neighborhood than what is there now, 2) an official Finding that the parking on this property pre-exists the 1988 date and therefore is exempt from further parking requirements and 3) that a site plan review is not required. The board further discussed the site plan review issue.

Mr. Vogel – expressed his opinion that a site plan review would not be required in connection with this application and the issuance a building permit would be logical.

Mr. Bucchere – made a motion that the application before the board and the conversion from a movie theater to four (4) residential condo units as laid out on the January 11, 2021 first floor plan of the Mill Wharf Plaza Development Project by Carr, Lynch & Sandell, Inc. does not increase parking demand from what was present at the site previously and is not more detrimental to the surrounding neighborhood. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

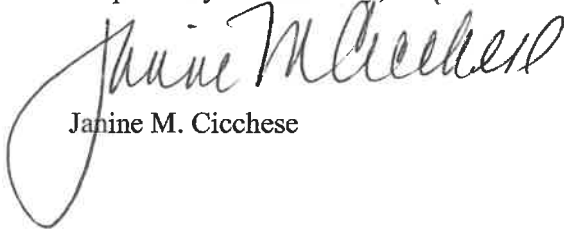
APPROVAL OF MINUTES:

Mr. Bucchere – Makes a motion to approve the June 4, 2020, September 24, 2020, October 15, 2020, November 19, 2020, December 22, 2020 and January 21, 2021 minutes. Motion seconded by Mr. Tibbetts, all in favor, unanimous.

Motion to adjourn by Mr. Cavanagh and seconded by Mr. Tibbetts, all in favor, unanimous.

Meeting adjourned at 10:40 pm.

Respectfully submitted by,



Janine M. Cicchese